THE HON'BLE SRI JUSTICE C.Y. SOMAYAJULU

WRIT PETITION NO.21409 of 1996

Dated 26-09-2005

Between:

Lingampalli Bangarayya. ….Petitioner

and

Special Deputy Tahsildar, Rampachodavaram,

and six others.

….Respondents

THE HON'BLE SRI JUSTICE C.Y. SOMAYAJULU

WRIT PETITION NO.21409 of 1996

ORDER:

This writ petition is filed questioning the order dated 11-09-1996 passed by the Sub-Divisional Magistrate, Mobile Court, Rampachodavaram (second respondent) under the provisions of the Andhra Pradesh Scheduled Area Land Transfer Regulation 1 of 1959 (the Regulations) in LTRP.No.1 of 1996.

The main contention of the learned counsel for the petitioner is that since petitioner was served with the notice in LTRP.No.1 of 1996 on 11-08-1996 asking him to appear on 13-08-1996 before the second respondent and since petitioner's request for time, to file his counter, was refused by the second respondent who passed the order impugned at the instance of the Collector, Kakinada, (third respondent), the same is liable to be set aside as violative of principles of natural justice and Rule 7 of the Andhra Pradesh Scheduled Areas and Land Transfer Rules, 1969 (hereinafter referred to as 'Rules'). It is his contention that petitioner's failure to avail the remedy of appeal is not of consequence because the Collector, who is the appellate authority, was physically present in the office of the second respondent and directed him to pass the order impugned, and since the order impugned is clearly violative of provisions of the Regulations because in the notice issued to him, petitioner was asked to show cause why he should not be ejected from the land mentioned therein while in the order impugned it is stated that petitioner is not in possession and tribals are in possession thereon and since the Tribunal (second respondent) can assume jurisdiction under the Regulations only when a non tribal is in possession of land in a scheduled area, but not when tribals are in possession of the land.

In the counter-affidavit filed on behalf of the respondents 1 to 4, it is alleged that after affording sufficient opportunity to the petitioner and since petitioner did not make a request for time, and is trying to occupy the lands of the tribals by using force, second respondent passed the order impugned, in view of the findings in O.S.No.61 of

1967 on the file of the District Court, Rajahmundry, and A.S.No.236 of 1973 on the file of this Court that tribals are in possession of the land.

Though this Court would not usually interfere with appealable orders when the petitioner fails to avail the remedy of appeal, I wish to interfere in this case, though the petitioner failed to avail the remedy of appeal, without going into the merit of the contention that the order impugned was passed at the instance of the appellate authority (third respondent), because *ex facie* the order impugned is violative of Rule 7 of the Rules and is violative of the principles of natural justice, inasmuch as the notice in Form No. B, directing the petitioner to appear on 13-08-1996, was signed by the second respondent on 09-08-1996 and the order impugned shows that the case was heard by the second respondent on 13-08-1996 itself, when as per Rule 7 of the Rules, there should be a minimum time gap of fifteen days between the date of service of notice and the date of hearing.

I also find force in the contention of the learned counsel for the petitioner that when the petitioner is held to be not in possession and the tribals are held to be in possession, question of second respondent invoking the jurisdiction under the Regulation does not arise

In view thereof Rule Nisi is made absolute, the writ petition is allowed with costs and the order impugned dated 11-09-1996 LTRP.No.1 of 1996 passed by the second respondent is set aside and the case is remitted to the second respondent for fresh disposal. Petitioner shall file his reply (written statement/counter) in the case before the second respondent within a period of six weeks from today and thereafter second respondent shall hold an enquiry and pass orders after affording an opportunity of being heard to the petitioner and pass orders as per law.

(C.Y. SOMAYAJULU, J)

Date:26-09-2005

ghn